

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DIGITAL REG OF TEXAS, LLC,

Plaintiff,

v.

ADOBE SYSTEMS, INC., et al.,

Defendants.

No. C 12-1971 CW

ORDER SUMMARIZING
RULINGS FROM
JANUARY 22, 2014
CASE MANAGEMENT
CONFERENCE

(Re: Docket No.
462, 483)

_____/

In this patent infringement case, Plaintiff Digital Reg of Texas, LLC accuses Defendants of infringing U.S. Patent No. 7,673,059 and 6,751,670 (the '059 patent and the '670 patent, respectively). At the January 22, 2014 case management conference, after considering the parties' papers and arguments, the Court ruled on two motions: Adobe's motion for relief from nondispositive pretrial order of magistrate judge and Symantec's motion to strike portions of the report submitted by Digital Reg's expert, Dr. Premkumar T. Devanbu. See Docket No. 489. Those rulings are summarized below.

Adobe's motion for relief from nondispositive order of magistrate judge is denied. The Court sees no clear error or inconsistency with law in Judge Westmore's order.

Symantec alleged that Devanbu's expert report covered three new theories that had not been disclosed in Digital Reg's infringement contentions: (1) a "seat transfer" theory describing how Symantec's CLT products infringe the "successive recipient" limitation of claims 32 and 45 of the '670 patent; (2) a theory

1 that Symantec's CLT products infringe claim 16 of the '059 patent;
2 and (3) a theory that Symantec infringes claim 25 of the '059
3 patent.

4 Regarding the "seat transfer" theory, Digital Reg
5 sufficiently disclosed this theory to Symantec with the
6 information available at the time the infringement contentions
7 were served. See Infringement Contentions, 51-55; Creagri, Inc.
8 v. Pinnaclife Inc., 2012 WL 5389775, at *2 (N.D. Cal.). The
9 motion to strike this theory is therefore denied.

10 As to the theory that CLT products infringe claim 16 of the
11 '059 patent, however, Digital Reg's infringement contentions did
12 not specifically accuse the CLT products by name, which is
13 insufficient under Patent Local Rule 3-1(b). Digital Reg may not
14 now assert this theory for the first time through its expert
15 report.

16 The same is true of Digital Reg's theory that Symantec
17 infringes claim 25 of the '059 patent. Digital Reg never asserted
18 this claim against Symantec at all. See generally Infringement
19 Contentions, App'x A-2. Digital Reg's arguments that Symantec
20 will not be prejudiced are unavailing because if Digital Reg was
21 not diligent in seeking leave to amend its infringement
22 contentions, the inquiry may end there. O2 Micro Int'l Ltd. v.
23 Monolithic Power Sys., Inc., 467 F.3d 1355, 1366-68 (Fed. Cir.
24 2006) (because district court properly concluded that plaintiff
25 did not demonstrate diligence, there was "no need to consider the
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question of prejudice"); see also Johnson v. Mammoth Recreations,
975 F.2d 604, 609 (9th Cir. 1992). Digital Reg cannot attempt to
introduce this theory through its expert at this stage.

IT IS SO ORDERED.

Dated: 2/26/2014


CLAUDIA WILKEN
United States District Judge